

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRED FOSDICK and U.S. POSTAL SERVICE,  
POST OFFICE, Kansas City, MO

*Docket No. 99-1811; Submitted on the Record;  
Issued August 18, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that his right rotator cuff condition and the need for two surgical repairs were causally related to his federal employment.

On March 1, 1998 appellant, then a 46-year-old rural mail carrier, filed an occupational disease claim alleging that the constant stress and strain placed on his right arm at work due to sorting, casing and lifting bundles of mail caused tears in his right rotator cuff. He asserted that his work-related shoulder condition necessitated two surgeries to repair the rotator cuff tears and that he utilized sick leave while he was absent from work. Appellant worked intermittently with periods of disability until he stopped work in April 1998.

Appellant submitted with his CA-2 form clinical and operative notes from Dr. Brian Ellefsen, an osteopath, dated December 29, 1994 through August 11, 1997, who treated appellant for shoulder pain and performed surgery to repair his torn right rotator cuff. Appellant also submitted notes dated January 26 through February 18, 1998 from Dr. Robert Lieurance, a Board-certified orthopedic surgeon, who evaluated appellant for continued shoulder pain and performed a second surgical procedure on his rotator cuff.

Dr. Ellefsen reported in a December 29, 1994 note that appellant, in his profession as a rural mail carrier, used his right hand at 90 degrees of abduction and internally rotated it to close mailboxes approximately 500 times each day. He noted that appellant had experienced right shoulder pain that had worsened over several weeks and mentioned that appellant previously sustained an AC separation on the right, which had been surgically treated with pins across the joint.<sup>1</sup> Dr. Ellefsen found appellant with a prominent distal clavicle, tenderness at the joint, cuff tendinitis and possible tear with degenerative joint disease of the AC joint of his right shoulder. In a January 4, 1995 note, Dr. Ellefsen reported that, although appellant's shoulder had improved, he still had shoulder pain that concerned him because of his duties as a mail carrier and farmer. He reported in a January 18, 1995 note that a magnetic resonance imaging (MRI)

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<sup>1</sup> The record later reflects that appellant sustained the acromioclavicular (AC) joint separation in his right shoulder in a motorcycle accident in 1973.

scan performed on appellant's shoulder revealed a partial tear of the rotator cuff with tendinitis. Dr. Ellefsen later reported that appellant underwent surgery on January 25, 1995 to repair the tear. He explained in his operative report that appellant spent the majority of his workday reaching behind the seat with his right hand, above the level of the shoulder, grabbing mail bundles and placing them in the front seat. Dr. Ellefsen related that appellant sustained a full thickness cuff tear and impingement syndrome in his right shoulder and severe degenerative joint disease in the AC joint in his right shoulder, which required a subacromial decompression, and resection of the distal end of his clavicle. He outlined in a report dated August 11, 1997 appellant's prior symptoms, which he opined, was secondary to appellant's work activities. Dr. Ellefsen indicated that, although appellant still had some prominence in the end of the resected clavicle, he continued the repetitive duties of delivering mail, reaching into the back of his car and behind his back. He recommended that day that appellant's employing establishment find another position for him to limit the repetitive use of his right arm. Dr. Ellefsen also recommended against any further surgery.

In a January 26, 1998 report, Dr. Lieurance noted that, after discussion with appellant, he would proceed with a second arthroscopy procedure to determine if there was more that could be done for his continued complaints of shoulder pain. He mentioned that appellant had a history remarkable of a motorcycle accident with a right AC separation for which he underwent surgery at that time with pinning. Dr. Lieurance further noted the rotator cuff surgery performed three years prior by Dr. Ellefsen. He related that appellant continued to work as a mail carrier with quite a bit of lifting and reaching throughout the day, although he noted pain as a result of his overhead work. In clinical notes dated February 6 through 18, 1998, Dr. Lieurance reported appellant's progress after the arthroscopy procedure which resulted in subacromial decompression and a mini-open right rotator cuff repair.

In a letter dated April 8, 1998, appellant's employing establishment controverted appellant's claim stating that he had a large farming operation, which involved harvesting, planting, tilling, plowing and the operation and maintenance of farm equipment in addition to his federal employment. The employing establishment asserted that there were motion activities required in appellant's farm duties, which would require much greater physical strength than that of a rural carrier. It also made reference to appellant's preexisting shoulder injury sustained in the motorcycle accident and to his arthritis mentioned in medical reports.

On April 20, 1998 the Office requested additional information from appellant regarding the activities he performed on his farm and additional medical documentation including the operative report for the surgery that corrected his dislocated AC joint in his right shoulder after the prior motorcycle accident.

On May 14, 1998 appellant submitted a detailed statement regarding his duties as a farmer. He indicated that he maintained a farm without livestock, with several different pieces of machinery including a tractor, disc, combine, drill and planter. Appellant noted that large pieces of equipment attach to the tractor with little trouble and that his tractor reduced the amount of lifting necessary to perform certain tasks. He stated that he made most of the repairs to his equipment; however, he enlisted help "when there is a major breakdown." Appellant concluded by stating that he did not believe his farming duties or his motorcycle accident in 1973 caused his rotator cuff tears.

On May 28, 1998 the Office requested additional medical documentation from Dr. Lieurance regarding his treatment of appellant's right shoulder condition. In response, the Office received a letter from his office which stated that, according to their records, appellant's case was not a workers' compensation injury and therefore, the requested information could not be released without appellant's approval. Dr. Lieurance subsequently submitted the requested operative report dated February 4, 1998, with appellant's permission, along with treatment notes taken while appellant was hospitalized for the second right shoulder arthroscopy and open rotator cuff repair.

On June 23, 1998 appellant's employing establishment informed the Office that the postmaster had received several calls from appellant's neighbors who had observed him working on different farms. On June 24, 1998 the Office received a facsimile from the employing establishment which contained notes taken that month regarding appellant's farm activities while on leave from work. While appellant was on leave for three weeks in February after his last shoulder surgery, he was reportedly observed working on large farm equipment in various fields.

The Office received additional clinical notes from Dr. Lieurance dated March 11 through June 8, 1998 which indicated that appellant received continual evaluation and therapy subsequent to his last surgery for his shoulder condition. Appellant reported to Dr. Lieurance during that period that he continued to have shoulder pain, particularly in cold weather, and that at times, he found it painful to drive a car.

By decision dated September 2, 1998, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his condition was caused by employment factors as required under the Federal Employees' Compensation Act. The Office found that, although Dr. Lieurance mentioned appellant's work duties, his description of those duties was vague and that he did not explain how such activities caused his condition. The Office further found that it had not received the information requested from Dr. Lieurance regarding the development of the claimed condition, in light of appellant's preexisting AC separation, clavicle fracture with pinning from a 1973 motor vehicle accident and severe degenerative disc disease. The Office concluded that any supporting medical opinion submitted needed to have distinguished between the effects of the underlying condition and work activities, and that having experienced symptoms while working does not establish causal relationship.

In an undated letter received by the Office on November 24, 1998, appellant requested reconsideration of the September 2, 1998 decision and submitted a medical report from Dr. Ellefsen dated November 23, 1998. Dr. Ellefsen reported that he saw appellant last on August 11, 1997 prior to his repeat arthroscopy and that his condition had somewhat improved. Dr. Ellefsen reported that appellant had worked as a rural mail carrier for 20 years, driving his vehicle with his left hand and reaching out through the window to place mail in the box with his right. He further reported that appellant also reached in the backseat to get mail out of bags as well as casing mail at levels with his hand above his shoulder. Dr. Ellefsen opined that given appellant's position over the last 20 years as a rural mail carrier, he believed, within a reasonable degree of medical certainty, that appellant's rotator cuff tears and the need for two surgical repairs were work related and directly caused by his work activities.

By decision dated January 5, 1999, the Office denied appellant's request for modification based on a merit review of the claim. The Office found that Dr. Ellefsen's November 23, 1998

report was based on an inaccurate medical and factual history, and therefore lacked the requisite probative value to establish causal relationship.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>4</sup>

In an occupational disease claim such as this, claimant must submit: (1) medical evidence establishing the existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence that the diagnosed condition is causally related to the employment factors identified by claimant.<sup>5</sup>

The medical evidence required is generally rationalized medical opinion evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.<sup>6</sup> Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that the condition was caused by his employment is sufficient to establish a causal relationship.<sup>7</sup>

In the instant case, appellant submitted medical evidence from Dr. Ellefsen, in which he related appellant's specific work duties to his right rotator cuff tears, the mechanism of injury and need for two surgical repairs. Dr. Lieurance provided no medical opinion regarding causal relationship. The Board finds that Dr. Ellefsen has offered an uncontroverted opinion that appellant's rotator cuff condition was contributed to by his employment activities. The Office found in its January 5, 1999 decision that, without a discussion of appellant's motorcycle accident in 1993 and apparent knowledge of his farming duties, Dr. Ellefsen's November 23, 1998 report was based on an inaccurate medical and factual history. The record establishes, however, that Dr. Ellefsen was aware of appellant's motorcycle accident and farming activities, as he had discussed in previous notes, appellant's AC joint separation as a result of the accident

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>5</sup> *Jerry D. Osterman*, 46 ECAB 500 (1995); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>6</sup> *Victor J. Woodhams*, *supra* note 5.

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

and appellant's concern for his shoulder pain with regard to his work and farming duties. Although the medical evidence submitted by appellant is not sufficient to meet his burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's rotator cuff condition and his employment activities and is sufficient to require further development of the record.<sup>8</sup>

Accordingly, the case will be remanded for further development and a *de novo* decision. On remand, the Office shall prepare an appropriate statement of accepted facts and shall further develop the medical evidence to determine whether appellant's right rotator cuff condition and need for two surgical repairs are causally related to his federal employment.

The January 5, 1999 and September 2, 1998 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings in accordance with this decision.

Dated, Washington, D.C.  
August 18, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> See *Horace Langhorne*, 29 ECAB 820, 821 (1978).